

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 26th day of May, 1998

Before:

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Writ Petition No. 11729 of 1992

Sri Mahadevappa,
s/o Madappa,
r/o Ambruthi Village,
Melkote Hobli,
Pandavapura Taluk,
Mandya District

..Petitioner

(By Sri B.M. Chandrashakaraiah &
Sri B.C.Udayashankar, Advocates)

-Vs-

1. Sri Eranna,
s/o Chikkeeraiah,
r/o Ambruthi Village,
Melukote Hobli,
Pandavapura Taluk,
Mandya District;

2. Zilla Parishat,
Mandya, by its Chief Secretary,
Mandya;

3. Mandal Panchayat,
Jakkanahalli,
Pandavapura Taluk,
Mandya District,
by its Pradhan

..Respondents

(By Sri G.S.Visweswara, Adv., for R-1;
R2 and R3 served)

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Writ Petition is filed praying to quash the
Annexure-D, the order dated 26-12-91 passed by the R-2
in Appeal No.55/89.

This writ petition coming on for preliminary
hearing in 'B' Group this day, the Court made the
following:-

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ORDER

Petitioner claims that he is the owner of a property bearing katha No.35/2 in Ambruthi Village measuring East to West: 31 feet and North to South: 44 feet falling within the jurisdiction of the third respondent Panchayat. He claims to have obtained a licence for construction from the said Panchayat on 13-12-1989.

2. The first respondent, who is his neighbour and owner of property lying to the west of petitioner's property filed O.S.No.115/1990 on the file of the learned Munsiff, Srirangapatha, against the petitioner for a declaration that he is the owner of the six feet wide space lying between the two properties shown by letters ABCD in the suit sketch and that it formed part of his property shown by the letters HDCK in the said suit sketch measuring East to West 52' feet and North to South 34'. It is stated that an order of status-quo has been granted by the learned Munsiff in that suit. ✓

Rmk

3. The first respondent filed an appeal (Ap.No. 55/1989) before the second respondent challenging the grant of licence in favour of the petitioner, contending that the petitioner had included his (first defendant's) vacant space in his property in the plan for construction and proposing to construct in a portion of his vacant space. The second respondent allowed the said appeal by order dated 26-12-1991 [Annexure-D] and set aside the licence granted to the petitioner and remanded the matter to the third respondent to consider and issue a fresh licence in accordance with the relevant Act and the Rules. He has held that the Panchayat has granted a licence to petitioner to construct a house measuring East to West 27 ft. and North to South 44 feet; and as per the Karnataka Mandal Panchayat (Control of Erection of Building) Rules 1986, petitioner could construct only 21 feet (East to West) and not 27 feet. Feeling aggrieved, the petitioner has filed this petition and sought quashing of Annexure-D.

4. The petitioner contends that he has already constructed the building in accordance with the licence; that he has neither encroached on the

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first respondent's property nor violated the licence; that the question whether the strip of land lying between the two properties shown by the letters ABCD in the suit sketch in O.S.No.115/1990 is pending before the Civil Court and in these circumstances, the second respondent committed a serious error in setting aside the licence by assuming that the first respondent had left 6 feet vacant space on the Eastern side of his property and that the petitioner had encroached on a portion of the said vacant space forming part of the first respondent's property and giving a decision on the measurements of the properties of parties.

5. On the other hand, the first respondent contends that the licence has been rightly set aside as it violated the provisions of law, as held by the second respondent. He contends that in the licence issued to petitioner (Annexure-A) the measurements of petitioner's property is shown only on East to West: 27feet and North to South 44 feet and therefore petitioner's contention that the East to West measurement of his property is 31 feet is erroneous and attempts to include a portion of his (first respondent's) property.

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RMR

6. The second respondent has observed that any dispute in regard to the space between the properties is a civil matter and will have to be decided by a Civil Court. He has also noticed that a suit is pending between the parties. In spite of it, the second respondent has proceeded to examine the matter and has virtually given a finding that the petitioner had encroached an open space of the width of 6' (East to West) forming part of the property of the first respondent and has given his decision on the basis of such a finding. The second respondent is not expected to decide questions of title or the extent of the properties particularly when the matter is pending before the Civil Court.

7. In the circumstances, the proper course is to maintain status quo till the decision by the Civil Court. The decision of the second respondent cannot be sustained. It is however made clear that these observations are not to be construed as accepting the contentions of petitioner in regard to the measurements of his property. The entire matter will be decided in the Civil Suit.

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8. This petition is, therefore, allowed in part and Annexure-D is quashed on the limited ground that second respondent could not decide the extent of properties or title. It is made clear that if the ultimate decision of the Civil Suit is in favour of the first respondent, the third respondent will be entitled to take necessary consequential action to demolish the construction in the disputed portion in addition to any action that may be taken by the first respondent in execution of the decree that may be granted in its favour. On the other hand if the ultimate decision in the Civil Suit is in favour of petitioner, the building as constructed cannot be disturbed by respondents.

Sd/-
JUDGE

Bnr/-

